STATE OF CALIFORNIA PETE WILSON, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
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MAY 16 1996

May 15, 1996

VIA FEDERAL EXPRESS

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20036

Re: FCC 96-182
CC Docket No. 96-98

DOCKET FILE COPY ORIGINAL

Dear Mr. Caton:

Please find enclosed for filing an original plus eleven copies of the COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA ON THE NOTICE OF PROPOSED RULEMAKING in the above-referenced docket.

Also enclosed is an additional copy of this document. Please file-stamp this copy and return it to me in the enclosed, self-addressed postage pre-paid envelope.

Yours truly,

Mary Mack Adu

Mary Mack Adu
Attorney for California

MMA:jmc

Enclosures

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
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COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA ON THE NOTICE OF PROPOSED RULEMAKING

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TABLE OF CONTENTS

RECEIVED
MAY 16 1996
FCC MAIL ROOM

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	)	
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COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA ON THE NOTICE OF PROPOSED RULEMAKING

I. INTRODUCTION AND SUMMARY

The People of the State of California and the Public Utilities Commission of the State of California ("California" or "CPUC") hereby respectfully submit these comments to the Federal Communications Commission ("FCC" or "Commission") on the notice of proposed rulemaking ("NPRM") regarding the implementation of the local competition provisions in the Telecommunications Act of 1996 (hereinafter, the 1996 Act).

The FCC has covered a broad range of topics in this NPRM, ranging from the scope of the Commission's authority to the obligations imposed on telecommunications carriers, local exchange carriers (LECs), and incumbent LECs.[1] Of utmost significance is the FCC's tentative conclusion that Congress

1. The 1996 Act imposes different interconnection obligations based on the classification of the carrier. See, sections 251(a), 251(b), and 251(c).

intended that Sections 251 (Interconnection) and 252 (Negotiation, Mediation, and Arbitration) apply to both interstate and intrastate aspects of interconnection and that the FCC's regulations implementing those sections apply to both aspects, as well. This tentative conclusion literally eviscerates Section 2(b) of the Communications Act of 1934.[2] The CPUC opposes this tentative conclusion on the grounds that it would preempt the states in intrastate telecommunications matters, contrary to the 1996 Act and the congressional intent that underlies it.

The Commission has a role to play in promoting competition and effectuating a seamless national network. That role is not to erect rigid, detailed implementation rules which would constrain those states that have already undertaken initiatives that work and thereby inhibit the opening of markets. This is not what Congress intended when it passed the 1996 Act. Rather, Congress envisioned joint federal/state coordination in opening up the telecommunications network from coast to coast.

In the limited circumstances where national guidelines may be required, the CPUC recommends that the rules be flexible and provide the states with a menu of options from which to choose in opening up the network to competition. The FCC seeks comment on whether states should be allowed to "experiment" with different

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2. Section 2(b) is also known as section 152(b) of the 1934 Act. It established state jurisdiction over intrastate communications by wire or radio, thereby marking the beginning of dual regulation in telecommunications.

approaches to interconnection, collocation, and unbundled elements. NPRM, ¶51. The CPUC believes that states ought to have the freedom to try out various approaches so that they can devise procedures best suited to their individual localities and needs.

The FCC asks whether states can impose any of the obligations the statute imposes on incumbent LECs on the new entrants. NPRM, ¶45. The CPUC believes there may be instances where it makes sense to impose the same regulation on non-incumbents as on incumbent LECs, for example, in promoting symmetrical negotiations. Again, a state should not be constrained by a strict national rule from implementing a regulation that comports with the Act's goals of removing barriers to entry and promoting competition.

The Commission opines that there should be uniform national rules for evaluating interconnection arrangements. NPRM, ¶50. California takes a different view. The CPUC promotes voluntary interconnection negotiations between the parties, with certain "preferred outcomes" being the optimum, but not the only, approach when parties cannot agree.[3] In California, carriers are allowed to negotiate the points of interconnection. Voluntary negotiations between the parties is consistent with the

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3. The CPUC in D. 95-12-056 established an expedited procedure for those parties opting for a "preferred outcome." The CPUC's procedure does not mandate that parties choose only a "preferred outcome." Parties are free to choose or not choose a "preferred outcome" with the understanding that the CPUC has a procedure in place to accommodate those agreements that are not "preferred outcomes."

1996 Act, which eliminates the requirements of sections 251(b) and 251(c) if the parties can come to an agreement voluntarily. Paving the way for interconnection by means of negotiated agreements is working well in California, without the imposition of a national standard or stringent prescriptive rules.

On the issue of collocation, the FCC asks whether a national standard may be helpful. This is one of those instances where a national standard may be useful. In Decision (D.) 95-04-073, the CPUC adopted the FCC's standards, as modified by the court in Bell Atlantic v. FCC, 24 F.3d 1441 (D.C. Cir. 1994).

With reference to unbundled elements, the Commission proposes that it should identify a minimum list of network elements for unbundling. NPRM, ¶77. The CPUC agrees and suggests that the Commission look at California's tentative list and section 271 of the Act. The CPUC believes minimum standards for terms and conditions should be set by the states. In this manner, differences in network administration can be more easily accommodated. California has developed a preliminary list of unbundled network elements which it is considering. (ALJ Ruling dated March 25, 1996 in R.95-04-043/I.95-04-044)

The CPUC agrees that resale obligations should be imposed only on incumbents. The CPUC generally frowns on resale restrictions, however, some resale restrictions such as forbidding the provision of lifeline service to non-lifeline customers may make sense. With respect to setting wholesale rates, Total Service Long Run Incremental Cost (TSLRIC) should be used to calculate the avoidable retailing costs, as a long term method. In the short term, a "tops down" method based on estimating a company's total avoidable costs is appropriate.

The CPUC favors letting market solutions work wherever possible, and is opposed to the FCC dictating prices. The CPUC believes the Commission should not limit the circumstances in which states can adopt bill and keep compensation arrangements.

II. SCOPE OF THE COMMISSION'S REGULATIONS

As the FCC is no doubt aware, California has been in the forefront of the telecommunications revolution by opening up its local telecommunications markets to competition. California's commitment to opening up its markets to competition predates the 1996 Act by several years. The process began with the Governor's call for the CPUC to develop a strategy for California to take full advantage of advanced telecommunications. The CPUC responded by issuing in November 1993, its report entitled "Enhancing California's Competitive Strength: A Strategy for Telecommunications Infrastructure" (hereinafter, the Infrastructure Report). The Governor's acceptance of the CPUC's recommendations made the CPUC's report the official policy of the state's executive branch.

The attached Executive Summary of the Infrastructure Report contains principles that are mirrored in the 1996 Act, including, but not limited to: (1) providing California's consumers with the benefits of interconnected networks (p. iv); (2) providing the opportunity to gain a competitive advantage in the global marketplace, with many of the benefits enriching the educational system, the health care sector, libraries, etc. (p. v); (3)

commitment to a level of universal service that keeps pace with current and future technological changes in the industry (p. vii); (4) opening all markets to competition and aggressively streamlining regulation to accelerate the pace of innovation (p. ix); (5) creating the nation's largest all digital, video and mobile marketplace (p. x); and (6) encouraging coordination to eliminate barriers preventing the use of advanced telecommunications (p. xi). <u>See</u> Attachment 1.

The California legislature endorsed this competitive vision in 1994. The California legislature passed Public Utilities (PU) Code Section 709.5 which states that it intends that "all telecommunications markets subject to commission jurisdiction be opened to competition not later than January 1, 1997."
In response to this legislative mandate, the CPUC initiated its local competition proceeding and redoubled its efforts in the ongoing unbundling proceeding. In December 1995, the CPUC issued its interconnection order (D.95-12-056) establishing the "preferred outcomes" approach for structured negotiation of interconnection agreements. A companion order (D.95-12-057) granted authority to 31 facilities-based competitive local carriers (CLCs). In March, the CPUC issued its resale order (D.96-03-020) which allowed resale competition for local services and established a wholesale rate based on avoided costs. A companion order (D.96-02-072) granted authority to 59 CLCs to offer local service through resale. Further local competition issues, such as number portability and long-term compensation for terminating local traffic will be addressed by the end of the year. The unbundling proceeding is scheduled to issue a decision

on LEC costs in June 1996, and an order establishing prices for an initial set of unbundled network elements in December 1996. As a result of the CPUC's actions, nine new carriers have filed tariffs to offer local service and the CPUC has approved twelve interconnection agreements between five competitors and two incumbents.

California and several other states have provided the groundwork for Congress to make local exchange competition the law of the land. We salute the Congress, and the FCC for moving as swiftly as possible to open these markets to competition. Just as it took federal/state cooperation to get us to this point in promoting competition, it will also require the joint coordination of the FCC and the states, with each respecting the other's spheres of authority, to achieve the national, seamless telecommunications network envisioned by Congress when it passed the 1996 Act.

A. Sections 251 and 252 Do Not Alter the Jurisdictional Division of Authority Over Interstate and Intrastate Interconnection Matters, Nor Matters Falling Outside the Scope of Those Sections.

The Commission tentatively concludes that Congress intended Sections 251 and 252 to apply to both interstate and intrastate aspects of interconnection, service and network elements. NPRM, ¶37. Whether or not the Commission is correct, the bottom line is that the FCC has gone a step too far by tentatively concluding that the Commission's regulations implementing these provisions apply to both intrastate and interstate aspects of interconnection. The CPUC opposes this conclusion because it would nullify section 2(b) of the 1934 Communications Act which is still in full force and effect.[4] The CPUC does not interpret sections 251 or 252 of the 1996 Act to give the Commission authority over intrastate functions.[5]

Section 152(b) of the 1934 Communications Act established state jurisdiction over intrastate wire or radio communication:

> "[N]othing in the [1934] Act shall be construed to apply or to give the Commission jurisdiction with respect to...charges, classifications, practices, services, facilities or regulations for or in connection with <u>intrastate</u> communications service by wire or radio of any carrier...." (Emphasis added.)

By its terms, this provision fences off intrastate matters from the Commission's reach, resulting in a dual regulatory system that has worked well over the years.[6] The 1996 Act does not preclude the dual regulatory system, but rather affirms it, with the caveat that the states not take action inconsistent with the Act.

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4. Section 2(b), also known as section 152(b) of the Communications Act of 1934, established state jurisdiction over intrastate telecommunications matters.

5. We note that the Commission concludes that Sections 251 and 252 do <u>not</u> alter the jurisdictional division of authority regarding matters falling outside the scope of 251 and 252. <u>NPRM</u> at ¶40. We agree with this conclusion.

6. The Supreme Court agreed that Section 151, which defines the role of the Commission, and 152(b) "are naturally reconciled...to enact a dual regulatory system...." <u>Louisiana Pub.Serv.Comm'n</u>, 476 U.S. 355 at 370; (Emphasis in original).

The Commission's tentative conclusions amount to preemption without a showing of Congressional intent to do so. "The critical question in any preemption analysis is always whether Congress intended that federal regulation supersede state law." Louisiana Pub.Svc.Comm'n, 476 U.S. 355 at 369 (1986)(emphasis added). Nothing in the 1996 Act itself, or in the Joint Conference Statement relative to sections 251 or 252 support the Commission's conclusion that the FCC's regulations apply to both interstate and intrastate aspects of interconnection, service and network elements. Congress was fully aware of the existence of Section 2(b) when it passed the 1996 Act, and could have made it plain that Sections 251 and 252 clearly grant the Commission jurisdiction over intrastate interconnection, service and network elements.[7] Congress did not do so.

Congress is not reticent about making its intent clear, as it did when Congress passed the Omnibus Reconciliation Budget Act (OBRA) of 1993. In that legislation, Congress made plain that it was preempting state regulation of the "rates charged by" mobile service providers, consistent with Congress' concern that rates charged by Commercial Mobile Radio Service (CMRS) providers to

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7. The Commission reasons that "[i]n enacting section 251 after section 2(b) and squarely addressing therein the issues before us, we believe Congress intended for section 251 to take precedence over any contrary implications based on section 2(b)." NPRM, at ¶39. It appears that the opposite is more likely to be true, i.e., since the 1996 Act was passed after section 2(b), Congress had every opportunity to have explicitly authorized the Commission to preempt the states over intrastate matters pertaining to interconnection, but it did not.

the end users should not be subject to state regulation unless necessary to ensure just, reasonable and nondiscriminatory prices to end users.[8]

The Supreme Court in Louisiana PSC placed limits on a state's authority over intrastate communications when the state's exercise of that authority negates the Commission's exercise of its own lawful authority over interstate communication.[9] The NPRM presents no facts to show that the state's regulation of the intrastate aspects of interconnection, service and network elements negate the Commission's regulations. Moreover, the 1996 Act, by reinforcing important roles for states to play in overseeing the terms and conditions of interconnection, codifies the collaborative federal/state approach to regulation. In so doing, the Act implicitly recognizes that the states' role in approving or rejecting interconnection agreements does not negate federal policy or interest. In addition, the state's right to regulate other terms and conditions of interconnection is preserved.

In sum, the 1996 Act does not nullify section 2(b) of the Communications Act of 1934. Section 2(b) remains in full force and effect. If anything, the 1996 Act is affirmation that the

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8. See, Budget Act, §332(c)(3)(A) which provides in pertinent part that "no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service...except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile service...." (Emphasis added.)

9. 476 U.S. at 375-76, n. 4.

Congress intended to retain a system of dual regulation by continuing to carve out areas over which the states retain intrastate jurisdiction.

B. **The Commission Should Not Set Up Explicit National Rules to Preempt the States.**

The CPUC believes that the FCC should not set up explicit national rules to preempt the states. Instead, the FCC should adopt options from which a state may choose when arbitrating an agreement under section 252. This approach is consistent with the Commission's suggestion that a range of different approaches used by several states comply with the Act. NPRM ¶29. The CPUC believes that a set of explicit rules may not be broad enough to allow California's existing regulations to remain in effect and would violate section 251(d)(3) which specifically preserves state access regulations.[10] Most importantly, explicit rules may inhibit competition by exacerbating an already litigious environment. In this situation, if a state approves a negotiated or arbitrated agreement that a party perceives as violating the FCC's explicit rules, the party is likely to take its case to federal district court for a perceived infraction, even if a state's action was consistent with the Act. If the FCC

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10. Section 251(d)(3) essentially preserves state access regulations by forbidding the Commission from " preclud[ing] the enforcement of any regulation, order, or policy of a State commission that...establishes access and interconnection obligations of local exchange carriers."

establishes a menu of options, it is more likely that agreements will be compatible with one of the options.

For example, the FCC could develop an options model for the pricing of call termination. Three options would be: 1) bill and keep, 2) Michigan's bounded bill and keep, or 3) call termination rates based on cost. A state commission could choose from any of these options. In this way, the FCC would assist states that are still in the process of developing their access policies, but would not preempt states that have already developed regulations that are consistent with the Act.

III. OBLIGATIONS IMPOSED ON INCUMBENT LECS

A. Interconnection

1. States Should be Allowed to Impose Requirements On Non-incumbent LECs Where Appropriate.

The FCC asks if state commissions have the authority to impose some or all of the requirements in the statute that are imposed on incumbent LECs, and also requests comments on the benefits of imposing incumbent LEC obligations on all telecommunications carriers. NPRM, ¶45. A reasonable reading of section 251 (d)(3) is that state access and interconnection regulations are preserved when they are consistent with section 251, and do not prevent implementation of the Act.

Overall, the Act establishes an environment where negotiated arrangements are the preferred method for non-incumbents to gain access and interconnection to incumbent LEC networks (see section 251(c)(1)). By not allowing the states to impose any of the requirements of section 251(c) and (d) on non-incumbent LECs, the

FCC would preclude the states from imposing symmetrical obligations where there is prior experience demonstrating that in selective circumstances, symmetrical obligations promote efficient negotiations. In developing rules to govern the interconnection negotiations between new competitive carriers and incumbent LECs, the CPUC determined that imposing reciprocal requirements on carriers would make the negotiating process more efficient. California's limited, but successful, experience with negotiated interconnection agreements clearly demonstrates that reciprocal and/or symmetrical terms can promote efficient and timely negotiations for certain issues. While most new entrants have experienced significant delays in states where interconnection negotiations were ordered without a framework, California's imposition of symmetrical requirements for some interconnection terms has resulted in none of the negotiations requiring arbitration. The relative success of California's interconnection process is discussed below.

2. **The FCC Does Not Have Exclusive Authority to Establish Interconnection Standards and Regulations.**

Section 251(c)(2) establishes the duty for incumbent LECs to interconnect with non-incumbent LECs on a basis that is at least equal in quality to that which the LEC provides itself or any other carrier that is currently interconnected. Section 252(d)(1) requires that the rate for interconnection of facilities and network elements should be based on cost, be nondiscriminatory, and may include a reasonable profit. Section 252(d)(2) establishes that the prices for call termination and transport should be based on cost. As described below in more detail, the CPUC's own policies governing the interconnection and termination of local calls are consistent with the Act.

Further, section 251(d)(3) limits the FCC's authority when it establishes and enforces regulations to implement section 251. The FCC must allow states to develop their own access regulations if these regulations are: (1) consistent with the Act, and (2) do not substantially prevent implementation of the requirements of section 251. The CPUC believes the FCC cannot exclusively mandate forms or prices for interconnection. The FCC must allow states to pursue their own policies which are consistent with the Act. Therefore, whatever regulations the FCC develops must accommodate state access authority preserved in section 251(d)(3).

3. **The FCC Can Learn Valuable Lessons from State "Experiments" -- California's Preferred Outcomes Model.**

Given that the FCC must accommodate the state's authority to establish access regulations consistent with section 251, the FCC faces many of the same problems that individual state commissions have tackled when developing their own access regulations and should use the experience gained from these "experiments". In developing its own rules governing interconnection between competing LECs, the CPUC faced many of the same concerns expressed by the FCC (NPRM, ¶¶50-51) as to the need for explicit and precise interconnection rules. In the CPUC's Local Competition proceeding (R.95-04-043), the incumbent LECs argued for detailed tariffs for interconnection, while the competitors argued for greater flexibility and the ability to negotiate . After considerable comments and several workshops, the CPUC adopted a framework that allowed carriers to negotiate interconnection arrangements, but provided an expedited dispute resolution process with arbitration if needed. The framework provided parties with "preferred outcomes" which represented the CPUC's understanding of the technical criteria that would be the new entrants' most frequently requested form of interconnection. The CPUC realized that there were numerous ways to interconnect and that each pair of carriers has unique circumstances that made a "one-size fits all" policy undesirable. The CPUC believed that the industry needed maximum flexibility to design and configure networks to meet customer needs. A detailed interconnection standard was not consistent with the CPUC's goal of fostering technological innovation and of technologically neutral regulations.

In December 1995, the CPUC issued D.95-12-056 which contained the negotiation framework and a list of "Preferred Outcomes." Unlike Section 251, the CPUC's December rules address only the interconnection of facilities necessary for the completion of local and toll calls, and 911 provisions. Other CPUC decisions address resale, unbundling and access to network elements.

4. California's Interconnection Rules Have Expedited the Negotiation Process and Allowed Flexibility.

While the CPUC understands many of the FCC's concerns about the negotiation process, California's experience with negotiated interconnection has been very successful. Since our interconnection rules were issued in December 1995, twelve interconnection contracts have been negotiated and approved between five competitors and the two major incumbent LECs. One interconnection agreement predates the rules adopted in December, but is consistent with current CPUC policy. Parties have informally reported that most agreements were negotiated in 30 to 60 days. The compensation arrangements and physical facilities used for interconnection reflect the diversity of the carriers involved.

Many of the agreements share common elements, but each agreement has special provisions that are designed to meet the needs of individual competitors. Most of the agreements have adopted the CPUC's interim call termination method of bill and keep, but two agreements have explicit call termination rates that are not symmetrical. A variety of physical facilities have been utilized for interconnection, including collocation and special access. The agreements utilize one-way and two-way trunks, and have detailed provisions for forecasting and servicing of trunk groups.

5. The FCC Should Propose Broad Guidelines for States to Use When Arbitrating -- Detailed National Rules Will Not Facilitate Negotiations.

Rather than adopting detailed national standards, the CPUC urges the FCC to adopt a more flexible framework that would allow states to choose among rules developed by other states that are consistent with the 1996 Act. The CPUC strongly believes that allowing parties to negotiate contracts within broad guidelines established by the states is consistent with the Act. The CPUC suggests that the FCC's role should be to guide states when they are establishing procedures to ensure that they are consistent with Sections 251 and 252. The FCC could accomplish this by developing options based on existing state policies for local interconnection. Those states without existing policies or whose policies conflict with Sections 251 and 252 could choose from among the menu of options as a basis for developing their own guidelines to be used in instances where arbitration is necessary.

Experiences in California and other states support the inference that detailed rules do not expedite the introduction of competition. In California, all the competitors reacted negatively to the detailed interconnection tariff proposals by the LECs. New entrants disapproved of the proposed tariffs because they did not leave any flexibility for the unique needs of individual carriers. At the same time, the parties also argued that certain key criteria for interconnection were missing from the proposed tariffs. To adopt final tariffs would have required a lengthy administrative process that would have likely included hearings to settle factual disputes. This would have delayed implementation of California's interconnection rules. New York's experience with default parameters has had similarly successful reception by both incumbents and new carriers, as this facilitated competition.

In giving the FCC the discretion to develop regulations to implement section 251, Congress was relying on the FCC's ability to determine how prescriptive the rules must be to facilitate competition. Experiences in states that have adopted detailed interconnection rules strongly suggest that too much detail can actually thwart the development of competition. Detailed interconnection rules have almost always resulted in complaint cases to settle disputes over the tariff rule's meaning. In some states, the disputes have resulted in considerable delays when the parties begin to interconnect. The experiences in these states should be a clear warning bell to the FCC that detailed rules do not always expedite the introduction of competition and, in some cases, hinder the parties' ability to enter markets by forcing arbitrary standards on competitors.

6. States Should Be Allowed to Set the Parameters for the Technically Feasible Points of Interconnection.

The FCC raises many questions about technically feasible points of interconnection. NPRM, ¶¶56-59. Regarding the issue of risks to network reliability, the FCC asks to what extent should risks be considered in determining technically feasible points. The CPUC believes that risks to network reliability should be taken into consideration and agrees with the FCC's tentative conclusion that if a party alleges network harm from connecting at a certain point, that party must present detailed information to support the claim.

The FCC tentatively concludes that if an incumbent LEC currently provides, or has provided in the past, interconnection at a point, then that point is technically feasible and should be made available to existing carriers. The CPUC agrees with this tentative conclusion. The FCC then states that, alternatively, the FCC could allow states to determine whether interconnection at a greater number of points would also be technically feasible. The CPUC believes that these two proposals are not mutually exclusive. The FCC can set the minimum standards for interconnection and allow states to determine the feasibility of a greater number of interconnection points, based on the design of the local network. The CPUC does not believe that giving states this authority will make it more difficult for carriers to develop regional or national networks. Carriers developing regional or national networks will have to interconnect with many different networks. The design of these networks may vary, as may the feasibility of interconnecting at certain points. States are in a better position to make this judgment, and can actually help to facilitate the development of regional or national networks. The CPUC agrees with the FCC's tentative conclusion that the incumbent LEC should have the burden of demonstrating that a point is not technically feasible for interconnection.

In California, the CPUC has allowed carriers to negotiate points of interconnection. If parties cannot reach mutual agreement, parties may avail themselves of a four-step dispute resolution process that includes arbitration and formal administrative procedures, if necessary. Although the issue was hotly contested in the parties' comments, to date, parties negotiating interconnection agreements in California have been able to reach agreement on a case-by-case basis.

7. **Just, Reasonable, and Nondiscriminatory Interconnection Standards Need Not Be Set On a National Basis.**

The FCC seeks comment on whether it should establish national standards to ensure that interconnection terms and conditions of an agreement are just, reasonable and nondiscriminatory. NPRM, ¶61. As the FCC points out in the NPRM, states have developed differing methods to ensure that the terms and conditions of interconnection agreements are just and reasonable. Since interconnection agreements have been approved in several states, and those agreements were determined to be just and reasonable, it is unclear why the FCC needs to develop a single national standard. Rather, the FCC should develop guidelines or options that states may use when arbitrating agreements filed pursuant Sections 251 and 252.

In California, the CPUC allows parties to negotiate most of the terms and conditions of interconnection, but established rules for some of the more controversial terms and conditions. The CPUC has mandated that agreements must contain reciprocal terms for the treatment of confidential data and liability limits. Parties are prohibited from unilaterally terminating an interconnection agreement. In cases where a newly interconnecting LEC does not have a prior credit record, the incumbent LEC may impose a deposit equal to an estimated two months of recurring flat-rated or usage-based interconnection charges based on the number and type of interconnection facilities ordered from the LEC. To ensure that interconnection trunks are provisioned in a timely manner, the CPUC established a